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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/632,061

07/31/2003

Robert E. Richard

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EXAMINER

SIMMONS, CHRIS E

ART UNIT

PAPER NUMBER

1612

MAIL DATE

DELIVERY MODE

05/19/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/632,061	<b>Applicant(s)</b> RICHARD ET AL.	
	<b>Examiner</b> CHRIS E. SIMMONS	<b>Art Unit</b> 1612	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 28 January 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-9, 11-20 and 22-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9, 11-20 and 22-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>2/5/2009 and 3/17/2009</u> .                                  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Obviousness Rejections*

Claims 1-7, 9-20, 22-26 were rejected under 35 U.S.C. 103(a) as being unpatentable over US 2002/0107330 in view of US 2003/0236514. **This rejection is maintained.**

Applicant asserts that a *prima facie* case of obviousness has not been made because the '514 reference is limited to maleic anhydride graft copolymers and does not provide the motivation to make the acrylic graft copolymers in the instant claims. This argument is not found to be persuasive because the maleic anhydride copolymers for practice of the reference invention include graft copolymers in addition to containing acrylic copolymers, e.g., acrylic acids [0010 - 0011].

It would be reasonably expected that one could successfully make the drug-releasing implantable medical devices of the primary reference by using equivalents of the copolymers of the primary reference. Graft copolymers are disclosed as alternative equivalents to alternating copolymers in the secondary reference at [0011] and [0049]. Accordingly, the skilled artisan would have found it obvious to make the copolymer compositions of the primary reference using graft copolymers as equivalents to alternating copolymers disclosed in the primary reference having the motivation of a reasonable expectation of successfully making the composition using one copolymer equivalent for another.

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Since a reference is good for all it teaches, including nonpreferred embodiments, applicant's assertion that the figures in the reference are directed to random copolymers containing styrene instead of graft polymers containing acrylic units are not found to be persuasive.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it is submitted that so long as knowledge relied upon is from within the level of ordinary skill at the time of the invention instead of only relying on knowledge from the applicant's disclosure, then the obviousness rejection is proper. In this case, the examiner has not relied solely on the instant specification, but the reasons for obviousness arise from objective facts found in the prior art; therefore, applicant's assertion that examiner is using hindsight reasoning is not found to be persuasive.

Claims 8 was rejected under 35 U.S.C. 103(a) as being unpatentable over US 2002/0107330 and US 2003/0236514, the combination taken further in view of WO 2000/061203. **This rejection is maintained.**

Applicant argues that since the tertiary reference is, unlike the currently claimed invention, directed to devices that are metallic in composition. Applicant further argues that the elongation value of a metal to the elongation value of a polymeric material is not relevant to patentability. The examiner does not find the arguments to be persuasive because the open "comprising" language in the claims does not preclude the presence of a metallic material. Even more importantly, the importance of the reference is in its disclosure of the importance

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of the mechanical properties of the stent, including its elasticity and elongation value to provide a product that is sufficient for its intended use, for example a stent for use in arteries. The reference was cited for its disclosure that elongation values above 8 % (including values above 20 % or 30 %) - suggesting the instant limitation of an elongation value of above 25 % - are sufficient to provide favorable mechanical properties to devices such as stents.

Claims 27 was rejected under 35 U.S.C. 103(a) as being unpatentable over US 2002/0107330 and US 2003/0236514, the combination taken further in view of USP 5,837,313. **This rejection is maintained.**

It appears applicant argued that the primary reference does not teach every limitation of the claims. Since the rejection is an obviousness rejection, it is not required to find every limitation in a single reference. Accordingly, the argument is not found to be persuasive.

No claims allowed.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

### ***Correspondence***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRIS E. SIMMONS whose telephone number is (571)272-9065. The examiner can normally be reached on Monday - Friday from 7:30 - 5:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frederick Krass can be reached on (571) 272-0580. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/C. E. S./  
Examiner, Art Unit 1612

***/Frederick Krass/  
Supervisory Patent Examiner, Art Unit 1612***